



U.S. Department of Justice

Environment and Natural Resources Division

JMG:DES:kb
90-11-3-07780

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October 15, 2003

Ellen Slights, Esq.
United States Attorney's Office
1007 Orange Street
Suite 700
Wilmington, DE 19801

Re: Armstrong World Industries

Dear Ellen:

Enclosed please find a file stamped copy of the proof of claim of the U.S., on behalf of EPA, in the above case. Thanks very much for your assistance to George Peirce of this office, while he was pinch hitting for me, in getting this filed.

Hang in there.

Sincerely,

David E. Street
Senior Attorney
Environmental Enforcement
Section
(202) 514-5471

Enclosure

cc: John Wheeler, Esq.
Michelle Lauterback, Esq.

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STREBT

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

ARMSTRONG WORLD INDUSTRIES, INC.,
et al.,

Debtors,

Case No. 00-4471 (RJN)

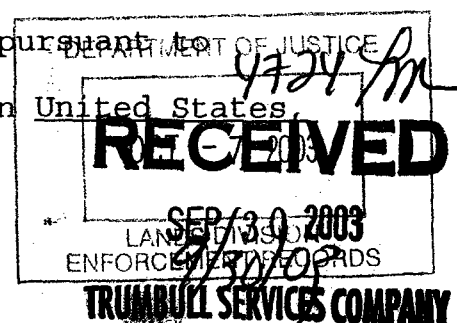
Chapter 11

(Jointly Administered)

PROOF OF CLAIM OF THE UNITED STATES OF AMERICA
ON BEHALF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Preliminary Statement

1. The Attorney General of the United States hereby files this Proof of Claim on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"). By this Proof of Claim, the United States asserts its entitlement to recovery of environmental response costs incurred or to be incurred by EPA with respect to seven Superfund sites, for which Armstrong World Industries, Inc. ("Armstrong" or "Debtor") is jointly and severally liable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675. The United States also asserts, as a protective measure, Debtor's continuing performance obligations with respect to two Superfund sites pursuant to consent decrees entered by the District Courts in United States.



70-11-3-07780

et al. v. Chemclene, et al., No. 99-CV-3715 (E.D. Pa.) and United States v. Air Products, Inc., et al., No. JH-88-365 (D. Md.).

General Allegations

2. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that any person who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a "hazardous substance" (defined in 42 U.S.C. § 9601(14)) at a "facility" (defined in 42 U.S.C. § 9601(9)) from which there is a "release" (defined in 42 U.S.C. § 9610(22)) or threatened release of a hazardous substance which causes the United States to incur response costs, shall be liable for, *inter alia*, all such response costs of removal or remedial action incurred by the United States not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

3. Debtor, as a corporation, is a "person" within the meaning of Sections 101(23) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(23) and 9607(a).

4. The Peterson/Puritan Inc. Superfund Site

("Peterson/Puritan Site") is a facility located in the towns of Cumberland and Lincoln, Rhode Island, and is included on the National Priorities List, 40 C.F.R. Part 300, App. B, established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B). Operable Unit No. 2 ("OU 2") at the Peterson/Puritan Site includes the J.M. Mills Landfill. At various times during the period from 1973 to 1986, Debtor arranged for the disposal or treatment, or arranged with a

transporter for transport for disposal or treatment, of CERCLA hazardous substances generated from its Braintree, Massachusetts manufacturing plant, at the J.M. Mills Landfill within OU 2 of the Peterson/Puritan Site. These hazardous substances included, without limitation, 1,1,1-trichloroethane ("TCA") and phthalates. Hazardous substances of the kind Debtor arranged to dispose of at the Peterson/Puritan Site have contaminated the soil and groundwater at the Peterson/Puritan Site, thereby constituting a release or threatened release of hazardous substances at or from the Peterson/Puritan Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. Through September 19, 2003, EPA incurred approximately \$1,535,256.20 in unreimbursed costs in conducting or overseeing environmental response actions with respect to OU 2 of the Peterson/Puritan Site. These costs include, among others, costs incurred by EPA in connection with its oversight of the Remedial Investigation and Feasibility Study at the Peterson/Puritan Site, and for which other potentially responsible parties are obligated to reimburse EPA under an Administrative Order on Consent. EPA's response actions and costs incurred with respect to the Peterson/Puritan Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to OU 2 of the Peterson/Puritan Site.

6. EPA anticipates that additional response actions will be conducted at OU 2 of the Peterson/Puritan Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it may incur approximately \$83 million in future response costs with respect to OU 2 of the Peterson/Puritan Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to OU 2 of the Peterson/Puritan Site.

7. The Lone Pine Landfill Superfund Site ("Lone Pine Site") is a facility located in Freehold Township, New Jersey, and is included on the National Priorities List. At various times, Debtor arranged for shipment of its wastes containing CERCLA hazardous substances to Scientific Chemical Processing, Inc. facilities in Newark and Carlstadt, New Jersey for disposal or treatment. These wastes were then transshipped to the Lone Pine Site for disposal or treatment, and included, without limitation, methyl ethyl ketone, benzene, methylene chloride, toluene, and acetone. Hazardous substances of the kind Debtor disposed of through transshipment by a transporter to the Lone Pine Site have contaminated both shallow and deep groundwater aquifers, wetlands, surface water, stream sediments, and soil at the Lone Pine Site, thereby constituting a release or threatened release of hazardous substances at or from the Lone Pine Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8. In 1992, EPA obtained a judicial consent decree with Armstrong and other parties for recovery of a portion of EPA's past costs with respect to the Lone Pine Site. United States v. Armstrong World Ind., et al., No. 89-4363 (GEB) (D.N.J. Feb. 18, 1992). Under that consent decree, Armstrong was given a release from further liability with respect to EPA's then past costs, but no release with respect to future costs that EPA might incur with respect to the Lone Pine Site.

9. After the settlement by consent decree referenced in paragraph 8, through February 2002, EPA incurred approximately \$34,256.18 in unreimbursed costs in conducting or overseeing environmental response actions with respect to the Lone Pine Site. EPA's response actions and costs incurred with respect to the Lone Pine Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the Lone Pine Site.

10. EPA anticipates that additional response actions will be conducted at the Lone Pine Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$100,000 in future response costs with respect to the Lone Pine Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its

assessment of future response costs with respect to the Lone Pine Site.

11. The Spectron, Inc. Superfund Site ("Spectron Site") is a facility located near Elkton, Maryland, and is included on the National Priorities List. At various times, Debtor arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of over 170,000 gallons of waste at the Spectron Site. This waste contained CERCLA hazardous substances, including, without limitation, TCA. Hazardous substances of the kind Debtor arranged to dispose of at the Spectron Site have contaminated the soil and groundwater at the Spectron Site, thereby constituting a release or threatened release of hazardous substances at or from the Spectron Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

12. Through September 15, 2003, EPA incurred approximately \$440,000 in unreimbursed costs in conducting or overseeing environmental response actions with respect to the Spectron Site. EPA's response actions and costs incurred with respect to the Spectron Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the Spectron Site.

13. EPA anticipates that additional response actions will be conducted at the Spectron Site and that it will continue to

incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$33 million in future response costs with respect to the Spectron Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to the Spectron Site.

14. The Sand, Gravel and Stone Superfund Site ("SGS Site") is a facility located in Cecil County, Maryland, and is included on the National Priorities List. At various times during the period from 1969 to 1974, Debtor arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of CERCLA hazardous substances at the SGS Site, including, without limitation, benzene, chlorobenzene, and methyl ethyl ether. Hazardous substances of the kind Debtor arranged to dispose of at the SGS Site have contaminated the soil and groundwater at the SGS Site, thereby constituting a release or threatened release of hazardous substances at or from the SGS Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

15. Through March 18, 2003, EPA incurred approximately \$538,000 in unreimbursed costs in conducting or overseeing environmental response actions with respect to the SGS Site. EPA's response actions and costs incurred with respect to the SGS Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The

United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the SGS Site.

16. EPA anticipates that additional response actions will be conducted at the SGS Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$24.3 million in future response costs with respect to the SGS Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to the SGS Site.

17. The Casmalia Resources Superfund Site ("Casmalia Site") is a facility located in Santa Barbara County, California, and is included on the National Priorities List. At various times, Debtor arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of over 776,000 pounds of wastes containing CERCLA hazardous substances at the Casmalia Site, including, without limitation, TCA, tetrachloroethylene, methylene chloride, nitrobenzene, and other spent solvents. Hazardous substances of the kind Debtor arranged to dispose of at the Casmalia Site have contaminated the soil and groundwater at the Casmalia Site, thereby constituting a release or threatened release of hazardous substances at or from the Casmalia Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

18. To date, EPA has incurred approximately \$38 million in unreimbursed costs in conducting or overseeing environmental response actions with respect to the Casmalia Site. EPA's response actions and costs incurred with respect to the Casmalia Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the Casmalia Site.

19. EPA anticipates that additional response actions will be conducted at the Casmalia Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$100 million in future response costs with respect to the Casmalia Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to the Casmalia Site.

20. The Omega Chemical Corp. Superfund Site ("Omega Site") is a facility located in Whittier, California, and is included on the National Priorities List. At various times, Debtor arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of approximately 7.8 tons of waste material containing CERCLA hazardous substances at the Omega Site, including, without limitation, solvents containing a variety of volatile organic compounds ("VOCs"). A variety of

VOCs, including, without limitation, perchloroethylene, trichloroethene, tetrachloroethene, and TCA, have contaminated the soil and groundwater at the Omega Site, thereby constituting a release or threatened release of hazardous substances at or from the Omega Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21. To date, EPA has incurred approximately \$3 million in unreimbursed costs in conducting or overseeing environmental response actions with respect to the Omega Site. EPA's response actions and costs incurred with respect to the Omega Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the Omega Site.

22. EPA anticipates that additional response actions will be conducted at the Omega Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$3 million in future response costs with respect to the Omega Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to the Omega Site.

23. The Operating Industries, Inc. Superfund Site ("Operating Industries Site") is a facility located in Monterey Park, California, and is included on the National Priorities

List. At various times, Debtor arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of CERCLA hazardous substances at the Operating Industries Site, including, without limitation, approximately 141,000 gallons of waste containing arsenic, cadmium, chromium, lead, and mercury. Hazardous substances of the kind Debtor disposed of at the Operating Industries Site have contaminated the soil and groundwater at the Operating Industries Site, thereby constituting a release or threatened release of hazardous substances at or from the Operating Industries Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

24. To date, EPA has incurred approximately \$30 million in unreimbursed costs in conducting or overseeing environmental response actions with respect to the Operating Industries Site. EPA's response actions and costs incurred with respect to the Operating Industries Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed costs with respect to the Operating Industries Site.

25. EPA anticipates that additional response actions will be conducted at the Operating Industries Site and that it will continue to incur costs in connection with those response actions. At this time, EPA estimates that it will incur approximately \$20 million in future response costs with respect

to the Operating Industries Site. This Proof of Claim includes all such future costs. The United States reserves the right to amend this Proof of Claim to update its assessment of future response costs with respect to the Operating Industries Site.

The United States' Claims on Behalf of EPA

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to OU 2 of the Peterson/Puritan Site. Debtor's liability to the United States is joint and several with that of other liable parties.

28. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Lone Pine Site. Debtor's liability to the United States is joint and several with that of other liable parties.

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Spectron Site. Debtor's liability to the United States is joint and several with that of other liable parties.

30. Pursuant to Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the SGS Site. Debtor's liability to the United States is joint and several with that of other liable parties.

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Casmalia Site. Debtor's liability to the United States is joint and several with that of other liable parties.

32. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Omega Site. Debtor's liability to the United States is joint and several with that of other liable parties.

33. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Debtor is liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Operating Industries Site. Debtor's liability to the United States is joint and several with that of other liable parties.

Protective Allegations

34. **The Malvern TCE Superfund Site** ("Malvern Site") is a facility located in East Whiteland Township, Chester County,

Pennsylvania, and is included on the National Priorities List. At various times, Armstrong arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of CERCLA hazardous substances at the Malvern Site, including, without limitation, mixed solvents containing trichloroethylene, perchloroethylene, and TCA. Hazardous substances of the kind Armstrong arranged to dispose of at the Malvern Site have contaminated the soil and groundwater at the Malvern Site, thereby constituting a release or threatened release of hazardous substances at or from the Malvern Site, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

35. EPA has incurred costs in conducting or overseeing environmental response actions with respect to the Malvern Site. Those costs include, without limitation, the costs of conducting a remedial investigation and feasibility study and EPA's selection, in November 1997, of the remedy for cleanup of the Malvern Site. EPA's response actions and costs incurred with respect to the Malvern Site are not inconsistent with the National Contingency Plan.

36. In 1999, Armstrong and thirty-four other potentially responsible parties ("PRPs") signed a Consent Decree ("Malvern Decree") with the United States in which Armstrong and the other PRPs agreed to perform the remedy for cleanup of the Malvern Site. The Malvern Decree was entered as a final judgment by the U.S. District Court. United States, et al. v. Chemclene, et al.,

No. 99-CV-3715 (E.D. Pa. Dec. 13, 1999). Armstrong's prepetition injunctive performance obligations under the Malvern Decree must be performed by the Debtor in Possession, cannot be discharged in bankruptcy, and will remain enforceable after a plan of reorganization is approved by this Court. Accordingly, the averments in this Proof of Claim pertaining to the Malvern Site are alleged as a protective measure to preserve the United States' rights and Debtor's performance obligations under the Consent Decree, and do not constitute an election of remedies or waiver of any enforcement rights by the United States.

37. In 1988 and 1992, Armstrong and other PRPs signed a Consent Decree and amendment thereto (collectively, the "SGS Decrees") with the United States concerning the SGS Site, in which Armstrong agreed to perform certain remedial actions with respect to the SGS Site. The SGS Decrees were entered as a final judgment and amendment thereto by the U.S. District Court.

United States v. Air Products, Inc., et al., No. JH-88-365 (D. Md. Apr. 21, 1988 and Jan. 28, 1992). Armstrong's prepetition injunctive performance obligations under the SGS Decrees must be performed by the Debtor in Possession, cannot be discharged in bankruptcy, and will remain enforceable after a plan of reorganization is approved by this Court. Accordingly, the averments in this paragraph 37 of the Proof of Claim pertaining to the SGS Site are alleged as a protective measure to preserve the United States' rights and Debtor's performance obligations under the SGS Decrees, and do not constitute an election of

remedies or waiver of any enforcement rights by the United States.

Concluding Provisions

38. No judgment has been rendered on any claim against Debtor included in paragraphs 27 through 33 of this Proof of Claim.

39. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this Proof of Claim, debts (if any) owed to Debtor or Debtor's estate by EPA or any other federal agency or department.

40. The United States does not hold any perfected security interest in property of Debtor with respect to any claim included in this Proof of Claim.

41. The United States' claims included in this Proof of Claim are asserted as general unsecured claims, except to the extent of any secured/trust interest in insurance proceeds received by the Debtor on account of environmental claims of the United States.

42. No payments to the United States have been made by Debtor on account of any claim included in this Proof of Claim.

Respectfully submitted,

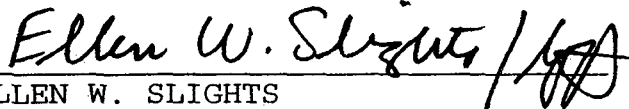
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Dated: September 29, 2003

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CERTIFICATE OF SERVICE

I certify that on this 29th day of September, 2003, I caused a copy of the foregoing Proof of Claim of the United States of America on behalf of the U.S. Environmental Protection Agency to be dispatched by First Class Mail for service on counsel for the Debtors:

Mark D. Collins, Esq.
Richards, Layton & Finger
One Rodney Square, P.O. Box 551
Wilmington, DE 19899

A handwritten signature in cursive script, reading "George A. B. Peirce".

George A. B. Peirce
Trial Attorney
U.S. Department of Justice